Supreme Court, U.S.
FILED
SEP 27 1997
CLERK

3

NO. 97-158

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

BARBARA F. GREEN, AND

STANLEY R. GREEN,

Petitioners,

-VS-

TOWN OF BROOKLINE,

Respondents.

3

On Petition for Writ of Certiorari to The
United States Court of Appeals forThe
First Circuit

REPLY TO RESPONDENT'S OPPOSITION

Barbara F. Green, Pro
Stanley R. Green, Pro
Petitioners
100 Granger Blvd. #206
Marlboro, Ma. 01752
Tele: 508-460-8081

15 pp

QUESTION PRESENTED

MASSACHUSETTS GENERAL LAW C. 151B AND ITS FEDERAL COUNTERPART ARE UNCONSTITUTIONAL BECAUSE THEY DEPRIVE AN EMPLOYEE OF ENTITLED COMMON LAW TORT ACTIONS ARISING OUT OF AND DURING THE COURSE OF A WORKMEN'S COMPENATION CLAIM AND VIOLATE APPELLANT's HUMAN RIGHTS.

TABLE OF CONTENTS

QUESTION PRESENTED..... i

TABLE OF CONTENTS..... . ii

TABLE OF AUTHORITIES.....iv, ivV

JURISDICTION..... 1

CONCLUSION..... 9

TABLE OF AUTHORITIES

HUMAN RIGHTS ART. 3

Everyone has the right to life, liberty and security of person.

HUMAN RIGHTS ART. 5

No one shall be subjected to torture, inhuman degrading treatment or punishment.

HUMAN RIGHTS ART. 8

Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental right granted him by the constitution or by law.

HUMAN RIGHTS ART. 11

Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

HUMAN RIGHTS ART. 23

(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against umemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

28 U. S. C. § 1391

Hurley v Reed,
110 U.S.APP. D.C. 32, 288 F. 2d 844(1961)

Moore v Federal Department Stores,
33 Mich App. 556, 190 N.W. 2d, 46 ALR 3d
1275, Amended MCLA 8411.4(Stat. ANN 1968 §17.144.

Markham v Pittsburgh Plate Glass Co.,
(WD Mich 1969) 299 Supp. 240

Ford v Revlon, Inc.
No. CV-86-148-PR, 1Indiv. Rts. Cases 1571,
Ariz. Sup. Ct. 1987.

Satterwhite v Smith,
36 F.E.P. Cases 148, 9th Cir. 1984

Gates v Life of Montana Ins. Co.,
668 P 2d 213, 216, No. 82-468, 1983

In re Bunston,
32 Montana 83, 155 P 1109, 1916

I THE SUPREME COURT OF THE UNITED STATES HAS JURISDICTION.

16 C.J.S. Constitutional Law §258, p. 1252, states in pertinent part:

"Conditions precedent to the maintence of causes of action that have already accrued may be imposed by the legislature, where the requirements operate only as reasonable restrictions on the exercise of the right to sue, but not where they operate as a denial or abridgement of existing rights. Statutes imposing conditions precedent to the maintence of an action or proceeding do not create vested rights, and statutes removing such conditions precedent may operate retrospectively without interfering with vested rights, as they effect the remedy only."

FURTHER, jurisdiction is based on 28 U. S. C. §1391

"Because of the restrictive reach of the federal venue statute 28 U. S. C. §1391, when Hurley v Reed, 110 O.S. App. D.C. 32, 288 F. 2d 844(1961) was decid ed, the practical effect was to have our District Courts to entertain such actions.

This case invloves the validity of the statute of limitations barring common law tort claims against an employer an employer 'arising out of and during the course of' a Workmen's Compensation claim wherein long delays occur and wherein it has long been recognized that "[m]uch of the responsibilty for separating injuries that are sufficiency work-lated from those that are not rest with the Industrial Accident Board, which must determine as a matter of fact whether a causal connection exists between employment and injury." The Massachusetts Legislature created a roster of impartial physican from which

the Judges could choose from and have the employee examined and the findings become primia facie evidence. **Moore v Federal Department Stores,** 33 Mich App 556, 190 NW2d 262, 46 ALR3d 1275, amended, MCLA §411.4(Stat Ann 1968 Rev §17.144). **Markham v Pittsburgh Plate Glass Co.,** (WD Mich 1969), 299 F. Supp 240. Reversed and remanded.

On April 8, 1996, after long delays, the Department of Industrial Accidents determined as a matter of fact, the employee suffered a mental disability as the result of a series odf stressful events in the owrkplace and incidents that were not bona fide personnel actions. The employee was not paid any compensation payments until April 8, 1996, when the Town of Brookline was ordered to do so. And the employee was not aware here compensation payments were discontinued in December 1991, until on April 8, 1996, and has filed a section 34A claim for total and permanent disability.

Thereafter, the Appellants brought Common Law tort actions before the U.S. District Court for the District of Massachusetts and the District Court granted the Petitioner's Motion to dismiss as time barred. the Appellant's appealed to the U.S. Court of Appeals for the First Circuit and the Appeals Court affirmed the District court's Dismissal. And the Petitioners have have appealed that decision.

Respondents state the Petitioners claims should fail That is erroneous, frivolous and without merit. The Equal employment Opportunity Commission, Massachusetts Commission Against Discrimination and the State Civil Service Commission, all, lack jurisdiction to decide work and non-work related injuries. That is the exclusive function of the Industrial Accident Board and that did not occur until on April 8, 1996, in this case at bar.

Petitioners can not bring Common Law Tort claims against the employer until on or after the date the Industrial Accident Board determines as a matter of fact, that, the injury suffered by the employee was causally work related, this case April 8, 1996.

I THE FINDINGS OF THE INDUSTRIAL ACCIDENT BOARD MUST BE ACCEPTED AS VALID AND FINAL UNLESS LACKING IN EVIDENTIAL SUPPORT OR TAINTED BY LAW OR ERROR.

Human Rights and freedoms, such as set forth in the Universal Declarattion of Human Rights, not restricted or prohibited by the Consitution or Laws of the United States(the United States being a Member State, in the fulliest agreement with the General Assembly, has agreed to accept Human Rights on their Merits) **can not** be impaired by the wrongful acts of individual unsupported by some form of Resolution, National or Internation law, statute or otherwise... a person may, by force or fraud, interfere but un-

less protected by some shield of resolution or law, he can not injure or destroy the right...he will only render himself amenable to the laws of the terrority wherein the cause arose.

The undisputed material facts are contained in the employee's official personnel folder(OPF) and her official medical folder(OMF) and can be summarized as follows:

The employee was hired in July 1978, as a G2 Jujior Clerk Typist. In the year 1980, as the results of the inability of the new hire which replace the resigned Senior Clerk G5, Elaine Gammerman , the employer divided, assigned and required the G@ Junior Clerk to perform one half of her duties monthly. And the employer continued to pay the Senior Clerk G5, her full salary and for work being performed by the Junior Clerk. A positive assertion of **Breach of Implied Contract and Covenant of good faith and fair dealing and the Equal Pay Act. Human rights Art. 23(2)**

The employee worked from July 1978 ti July 1985, without incident. On July 30, 1985, the employee received her first reprimand and then only after she had reported veterans were bringing back to be given to Alfred Hallenbrook, Director of Veterans Services, as payment on loans he had made to them and because Mr. Hallenbrook was not taking

returning the cash to the Treasure's Office on a timely basis.

July 1985, Hallenbrook and Kundo brought in a privately owned home computer and placed the records in the mputer and denied the employee access to the computer.

Between the dates of July 30, 1985 nad December 31, 1985, day Hallenbrook resigned, the employee had recieved seven written reprimand, four oral reprimands and two suspension.

Over the Labor Day week-end, Hallenbrook had to remove the computer from the office. Over the Labor Day week end Hallenbrook and Kundo barricaded the employee's desk in a corner of the office, placed a sign on the corner, reading, Do Not Disturb Mrs. Green, See Bill for Benefits. **Solitary confinement is the worse form of mental cruelty, torture that can be inflicted upon any human being.** Human Rights Art. 5.

November 1984, the employee filed complaints with the Civil service Commission, Board of Selectmen, Town Administrator and Union. The **inaction** of the officials to investigate the employee's complaint were offenses in themselves. **Ford v Revlon, Inc., No. CV-86-148-PR, 1 Indiv. Empl. Rts. Cases 1571, Ariz. Sup. Ct. 1987.**

Realizing they could not obtain justivc by any other means, the officials knowingly permitted individuals to resort to acts of inflicting emotional

distress to justify themselves with her termination. ' December 31, 1985, Mr. Hallenbrook resigned and January 1, 1986, Thomas Larkin, former Director and boss of the employee was called out of retirement. The employee's desk was immediately restored to its original position and recommended for upgrade to Senior Clerk Typist. **Denied** by Gerard Hayes, Personnel Director, reason: wait for the new director. A pretext to constructive discharge. Satterwhite v Smith, 36 F.E.P. Cases 148, 9th Cir. 1984.

May 1986, Bernard Belcastro was hired as the new Director. Second week of his tenure, he was called to the Personnel Office wherein Mr. Hayes had him re view the employee OPF. Upon return to the Veterans Office, he stooped and told the employee "Look, I heard all about you. I'm here to straighten you out. Do you understand."

The harassment that began under Hallenbrook continued into the Belcastro's term

November 4, 1986, the employee filed complaints with the civil Rights Div., Attorney's General's Office, Massachusetts Commission Against Discrimination and the Civil Service Commission. November 5, 1986, the employee was suspended for five days. On November 12, 1986, upon return to work from suspension, the employee was transferred to the Town Library without notification to herself or to the Civil Service commission.

On December 1, 1986, the Town of Brookline rece-

ieved the MCAD complaint. On december 2, 1986, Mr. belcastro and Mr. Hayes , with Mr. Hayes taking the employee by the arm, forced her down to the basement of the library, between book shelves and placed her in a suty carrel, stating "this is your new office." On December 3, 1986, the employee was suspended for five days.

On December 10, 1986, Mr. Belcastro and Mr. Hayes **demanded** the employee to sign a pre-written letter of resignation. **Gates v Life of Montana Ins. Co.,** 668 P. 2d 213, 216, No. 82-468, 1983. The employee refused and was suspended pending termination proceedings

January 27, 1987, the Town of Brookline terminated the emloyee as "unsuitable." Employee made timely appeal to the Civil Service Commission and on October 16, 1987, affirmed the termination of the employee. Employee filed judicial review in the Dedham District Court, Dedham, Ma. case no. 23869.

February 1988, the employee made application for refund of her retirement funds. March 8, 1988, Cathleen Cavell, Assoc. Town counsel, held if Mrs. Green were to voluntarily dismiss her state court lawsuits she then would recommend release of her retirement funds. June 1988, the employee dismiss her state court lawsuits. November 27, 1988, the employee filed Workmen's Compensation claims for DeQuervanes Disease and intentional infliction of emotional distress.

On or about July 14, 1990, David Turner, Town Counsel, telephoned the Green's lawyer, William Long, and stated he had found notes in his Assoc-iates files and if this case goes to trial, he would introduce them. Mr. Turner was asked, if, these notes had been presented at the termination or Civil Service hearing. Reply: **NO, did not want to upset the husband.** A pretext to force a settlement in favor of the town of Brookline and gain an advan-age in a civil matter. In re Bunston, 32 Mont. 83, 155 P 1109, 1916, A prosecuting attorney who threatened criminal prosecutions to force a settle-ment favorable to his client was disbarred.

Mr. Long withdrew from this case and the Greens retained Jonathan Levin, who appeared at Conference on March 14, 1991. After Conference, Sarah Wilson, Associate town Counsel handed Mr. Levin the alledged notes and states, if, this case goes to trail I will introduce these with a witness to testify to them. Thereafter, Mr. Levin refused to take this case.

March 30, 1991, the employee's spouse filed Motion of Order of Compensation Payment, and there were no more threats.

This case then proceeded to trail on 1/5/93, 2/9/93, 4/5/93, 4/6/93, 5/10/93, 5/12/93, 7/7/93.

On April 8, 1996, the Department of Industrial Accidents, Joellen M. D'Esti, ruled the employee had suffered a mental disability as the results of a series of events in the work place and incidents

that were not bona fide personnal actions.

CONCLUSION

The Equal Employment Opportunity Commission, Massachusetts commission Against Discrimination and the Massachusetts Civil Service Commission **do not** have jurisdiction for separating injuries that are sufficiently work related from those that are not not and, further, lack jurisdiction to determine as a matter of fact whether causal connection exists between employment and injury.

The Industrial Accident Board holds exclusive jurisdiction for separating injuries that are sufficienctly work-related from those that are not, and to determine as a matter of fact whether causal connection exists between employment and injury. Zerofski's Case, supra at 594

An employee's claim against her employer for intentional infliction of emotional distress is compensable under G.L. c. 152, 26 and common law action for such claim are barred by the exclusivity provision of G.L. c. 152, §24 and the statute of limitations toll from the date the Industrial Accident Board make their ruling.

The employee's claims against her employer that were the main thrust of intentional infliction of emotional distress are not compensable under G.L. c.

152, §26, and therefore not barred by the exclusivity provision of G.L. c. 152, §24, and common law actions for injuries not compensable under G.L. c. 152, §26, do not accrue until the date the Industrial Board rules the employee's injury was work related and causally connected to employment. The statute of limitations toll from the date the Industrial Accident Board makes it determination. This case it was April 8, 1996.

Barbara F. Green

Stanley R. Green

Stanley R. Green
100 Granger Blvd. é206
Marlboro, Ma. 01752-2847
tele: 508-460-801